

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CONNIE CORN,) Civil No. 07cv2427 J(RBB)
Plaintiff,)
v.) NOTICE AND ORDER FOR EARLY
LA PETITE ACADEMY, INC., a) NEUTRAL EVALUATION CONFERENCE
corporation; BRANDY FRYBARGAR;)
an individual; DOES 1-250,)
inclusive,)
Defendants.)

)

IT IS HEREBY ORDERED that an early neutral evaluation of your
case will be held on October 22, 2008, at 8:30 a.m. in the chambers
of United States Magistrate Judge Ruben B. Brooks, United States
Courthouse, 940 Front Street, Room 1185, San Diego, California.

Pursuant to Rule 16.1(c) of the Local Rules of the United
States District Court for the Southern District of California, all
parties, claims adjusters for insured Defendants and non-lawyer
representatives with full and unlimited authority¹ to enter into a

¹ "Full authority to settle" means that the individuals at the settlement conference be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have

1 binding settlement, as well as the principal attorneys responsible
2 for the litigation, must be present and legally and factually
3 prepared to discuss and resolve the case. Corporate counsel shall
4 not appear on behalf of a corporation as the party representative
5 who has the authority to negotiate and enter into a settlement.
6 Failure to attend or obtain a proper excusal will be considered
7 grounds for sanctions. (Where the suit involves the United States
8 or one of its agencies, only counsel for the United States with
9 full settlement authority need appear.) (If Plaintiff is
10 incarcerated in a penal institution or other facility, the
11 Plaintiff's presence is not required and Plaintiff may participate
12 by telephone. In that case, defense counsel is to coordinate the
13 Plaintiff's appearance by telephone.)

14 Plaintiff's(s') counsel shall give notice of the early neutral
15 evaluation conference to all defendants filing an answer after the
16 date of this notice.

17 All conference discussions will be informal, off the record,
18 privileged and confidential. Absent good cause shown, if any
19 party, counsel or representative fails to promptly appear at the
20 settlement conference, fails to comply with the terms of this
21 Order, including the failure to timely provide the settlement
22 conference memoranda WHEN REQUESTED, is substantially unprepared to
23 meaningfully participate in the settlement conference, or fails to

24
25 "unfettered discretion and authority" to change the settlement
26 position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D.
27 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person
28 with unlimited settlement authority to attend the conference
includes that the person's view of the case may be altered during
the face-to-face conference. Pitman at 486. A limited or a sum
certain of authority is not adequate. Nick v. Morgan's Foods,
Inc., 270 F.3d 590 (8th Cir. 2001).

1 participate in good faith in the settlement conference, the
 2 settlement conference may be vacated and sanctions may be imposed
 3 pursuant to Rules 16(f) and 37(b)(2)(B), (C), and (D), Federal
 4 Rules of Civil Procedure.

5 In the event the case does not settle at the early neutral
 6 evaluation conference, the parties shall also be prepared to
 7 discuss the following matters at the conclusion of the conference:

8 1. Any anticipated objections under Federal Rules of Civil
 9 Procedure 26(a)(1)(E) to the initial disclosure provisions of
 10 Federal Rule of Civil Procedure 26(a)(1)(A-D);

11 2. The scheduling of the Federal Rule of Civil Procedure 26
 12 (f) conference;

13 3. The date of initial disclosure and the date for lodging
 14 the discovery plan following the Rule 26(f) conference; and

15 4. The scheduling of a case management conference pursuant to
 16 Federal Rule of Civil Procedure 16(b).

17 The Court will issue an order following the early neutral
 18 evaluation conference addressing these issues and setting dates as
 19 appropriate.

20 Questions regarding this case may be directed to the
 21 magistrate judge's research attorney at (619) 557-3404.

22
 23 Dated: September 16, 2008


 24 RUBEN B. BROOKS
 United States Magistrate Judge

25 cc: All Parties of Record

26
 27 A Notice of Right to Consent to Trial Before a United States
 Magistrate Judge is attached for your information.

1 **NOTICE OF RIGHT TO CONSENT TO TRIAL BY UNITED STATES**
2 **MAGISTRATE JUDGE**

3 In accordance with the provisions of 28 U.S.C. § 636(c), you
4 are hereby notified that a United States Magistrate Judge of this
5 district may, upon the consent of all parties, conduct any or all
6 proceedings, including a jury or non-jury trial, and order the
7 entry of a final judgment. Consent forms are available in the
8 Clerk's office. Counsel for the Plaintiff shall be responsible for
9 obtaining the consent of all parties, should they desire to
10 consent.

11 You should be aware that your decision to consent or not to
12 consent is entirely voluntary and should be communicated solely to
13 the Clerk of the Court. Only if all parties consent will the
14 district judge or magistrate judge to whom the case has been
15 assigned be informed of your decision.

16 Judgments of the United States Magistrate Judges are
17 appealable to the United States Court of Appeals in accordance with
18 this statute and the Federal Rules of Appellate Procedure unless
19 the parties at the time of their consent to trial before a
20 magistrate judge agree upon review by the United States District
21 Court.

22

23

24

25

26

27

28